SEP 12 1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-244

OCCIDENTAL PETROLEUM CORPORATION, a California corporation and OCCIDENTAL OF UMM AL QAYWAYN INC., a California corporation, *Petitioners,*

v.

BUTTES GAS & OIL COMPANY, a corporation, JOHN BORETA and WILLIAM H. SMITH, *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR THE RESPONDENTS IN OPPOSITION

THOMAS H. KUCHEL
1211 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20036
(202) 466-2222
Attorney for Respondents.

Of Counsel:
WYMAN, BAUTZER,
ROTHMAN & KUCHEL
FRANK ROTHMAN
ALLAN B. GOLDMAN
GEORGE MIRON
1211 Connecticut Avenue, N.W.
Washington, D.C. 20036

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

Page

QUESTIONS PRESENTED 1

STATEMENT 3

ARGUMENT 8

I. The Case Does Not Raise the Question Sought To Be Presented 8

1. The District Court did not dismiss "merely because conduct in furtherance of the conspiracy induced acts by foreign governmental officials which violated international law" 8

2. The application of the act of state doctrine to sovereign acts of Great Britain, Iran and Umm Al Qaywayn independently supports dismissal 9

3. The application of the Hickenlooper amendment to sovereign acts of Sharjah is not presented 9

II. The Decisions of the Courts Below on the Grounds of Act of State Are Correct 11

1. The acts of foreign states were necessarily called into question by Occidental's complaint 11

2. The act of state doctrine precludes inquiry into the acts of foreign states 13

3. The alleged acts of Great Britain, Iran, Umm Al Qaywayn and Sharjah are sovereign acts as to which the act of state doctrine applies 16

4. The Hickenlooper amendment does not permit inquiry into the acts of states called into question by the complaint in this case 19

A. The complaint is not based upon a confiscation or other taking 20

Page

B. The complaint is not based upon a confiscation or other taking in violation of international law 23

C. The Hickenlooper amendment does not apply to the alleged "attempted confiscation" of contract rights 24

D. There is no *res* before the United States courts over which jurisdiction can be exercised, as the Hickenlooper Amendment 25

III. The Decisions Below Are Independently Supported on Grounds Other Than the Act of State Doctrine 27

1. The complaint was correctly dismissed because of lack of jurisdiction to fix the boundaries of foreign nations precludes proof of injury cognizable under the antitrust laws .. 27

2. The complaint was correctly dismissed because of the absence of Sharjah, Umm Al Qaywayn and Iran, which are indispensable parties 29

CONCLUSION 30

APPENDIX 1a

CITATIONS

CASES:

American Banana Co. v. *United Fruit Co.*, 213 U.S. 347 (1909) 14, 15, 16

Antoun v. *Harrison & Sons, Ltd.*, The Times Law Report 15 (Vacation Ct. Queen's Bench Div. September 23, 1965) 17, 18

Banco Nacional de Cuba v. *Sabbatino*, 376 U.S. 398 (1964) 13, 14, 19, 20

Carl Zeiss Stiftung v. *VEB Carl Zeiss, Jena*, 293 F. Supp. 892 (S.D.N.Y. 1968), aff'd., 433 F.2d 686 (2d Cir. 1970) 17

Page

Continental Ore Co. v. *Union Carbide & Carbon Corp.*, 370 U.S. 690 (1962) 8, 14, 15, 16
De La Croix v. *Chamberlain*, 25 U.S. (12 Wheat.) 599 (1827) 27
First National City Bank v. *Banco Nacional de Cuba*, 406 U.S. 759 (1972) 13
Flintkote Co. v. *Lysfiord*, 246 F.2d 368 (9th Cir.), cert. denied, 355 U.S. 835 (1957) 12
Foster v. *Neilson*, 27 U.S. (2 Pet.) 253 (1829) 27
F. Palicio y Compania, S.A. v. *Brush*, 256 F.Supp. 481 (S.D.N.Y. 1966) 24
French v. *Banco Nacionalde Cuba*, 23 N.Y.2d 46, 295 N.Y.S.2d 433 (1968) 21, 25
Garcia v. *Lee*, 37 U.S. (12 Pet.) 511 (1838) 27
Germany-Denmark-Netherlands North Sea Continental Shelf Cases [1969] I.C.J. 3 22
Glenn Coal Co. v. *Dickinson Fuel Co.*, 72 F.2d 885 (4th Cir. 1934) 12
Hawaii v. *Standard Oil Co.*, 405 U.S. 251 (1972) 12
Jimenez v. *Aristeguieta*, 311 F.2d 547 (5th Cir. 1962).. 18
Keogh v. *Chicago & N.W. Ry.*, 260 U.S. 156 (1922) 28
Lawrence v. *Sun Oil Co.*, 166 F.2d 466 (5th Cir. 1948). 29
McConnell v. *Dennis*, 153 F. 547 (8th Cir. 1907) 29
Oetjen v. *Central Leather Co.*, 246 U.S. 297 (1918) 14
Okefenokee Rural Elec. Membership Corp. v. *Florida P. & L. Co.*, 214 F.2d 413 (5th Cir. 1954) 28
Present v. *U.S. Life Insurance Co.*, 96 N.J. Super. 285, 232 A.2d 863 (1967), aff'd. per curiam, 51 N.J. 407, 241 A.2d 237 (1968) 24
Ricaud v. *American Metal Co.*, 246 U.S. 304 (1918)... 14
Shields v. *Barrow*, 58 U.S. (17 How.) 130 (1855) 29
South Penn Oil Co. v. *Miller*, 175 F. 729 (4th Cir. 1909) 29
Story Parchment Co. v. *Paterson Parchment Paper Co.*, 282 U.S. 555 (1931) 12
Sullivan v. *State of Sao Paulo*, 36 F.Supp. 503 (E.D. N.Y.), aff'd., 122 F.2d 355 (2d Cir. 1941) 18
Underhill v. *Hernandez*, 168 U.S. 250 (1897) 13
United Kingdom—Norway Fisheries Case, [1951] I.C.J. 116 22
United Mine Workers v. *Pennington*, 318 U.S. 657 (1965) 14, 16, 28
United States v. *Sisal Sales Corp.*, 274 U.S. 268 (1927) 8, 14, 16
Williams v. *Suffolk Ins. Co.*, 38 U.S. (13 Pet.) 415 (1839) 27

Page

MISCELLANEOUS:

Convention on The Continental Shelf (Law of The Sea Convention No. IV, April 29, 1958) TIAS 5578 4

Federal Rules of Civil Procedure, Rule 19 .....3, 29

Federal Rules of Civil Procedure, Rules 15(a), 59(e), 60(b) 3, 11

H.R. 11380, 88th Cong., 2d Sess. (1964) 21

H.R. Rep. No. 1925, 88th Cong., 2d Sess. (1964) 21

Remarks of Congressman Adair, 110 Cong. Rec. 23680 (Oct. 2, 1964) 26

Remarks of Senator Hickenlooper, 110 Cong. Rec. 19557 (Aug. 14, 1964) 26

Senate Report No. 1188, 88th Cong., 2d Sess. 24 (1964) 22

STATUTES:

Foreign Assistance Act of 1964, 22 U.S.C. § 2370(e)(2) 2

Public Law 89-171, Section 301(d)(2), 79 Stat. 659 (1965) 2

Clayton Act, 15 U.S.C. § 15 2

Sherman Act, 15 U.S.C. §§ 1, 2 2

TEXTBOOK:

Al-Baharna, The Legal Status of The Arabian Gulf States (1968) 17

TREATISES:

3A Moore, Federal Practice ¶ 19.12 (2d ed. 1970), p. 2371 29

3 Moore, Federal Practice ¶¶ 15.07[2], 15.10 (2d ed. 1970) 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-244

OCCIDENTAL PETROLEUM CORPORATION, a California corporation and OCCIDENTAL OF UMM AL QAYWAYN INC., a California corporation, *Petitioners,*

v.

BUTTES GAS & OIL COMPANY, a corporation, JOHN BORETA and WILLIAM H. SMITH, *Respondents*

BRIEF FOR THE RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED

The petition implies that the District Court's Opinion and Order decided that the act of state doctrine barred antitrust recovery "merely because conduct in furtherance of the conspiracy induced acts by foreign governmental officials which violated international law." (Petition, at 2). That question is not raised because the District Court dismissed for a different reason.

The questions which are presented are as follows:

1. Whether this Court should order the District Court to grant petitioners leave to amend their com-

plaint to allege that acts of the governments of Great Britain, Iran, Umm Al Qaywayn, and Sharjah were confiscations in violation of international law—allegations essential to a complaint under the Hickenlooper Amendment bringing into question the acts of foreign sovereigns—where petitioners were apprised by the District Court's Opinion and Order that their complaint was fatally defective in the absence of such allegations, and where petitioners failed to move in the District Court at any time for leave to amend, as they were entitled so to move under Rules 15, 59 and 60 of the Federal Rules of Civil Procedure.

2. Whether a private Sherman Act complaint was correctly dismissed for failure to state a claim of injury to business or property resulting from an antitrust violation, where the plaintiffs' right to recovery explicitly depended upon a determination of the reasons for acts of the sovereign states of Great Britain, Iran, Umm Al Qaywayn and Sharjah, and where none of the acts of these states was alleged to have been a confiscation or taking in violation of international law, and where there was no *res* before the court, as required by the Hickenlooper Amendment.

STATUTES AND RULES INVOLVED

The statutes involved are sections 1 and 2 of the Sherman Act (15 U.S.C. § § 1, 2); section 4 of the Clayton Act, 15 U.S.C. § 15; the Hickenlooper Amendment to the Foreign Assistance Act of 1964, 22 U.S.C. § 2370 (e)(2); and the 1965 Amendment to the Foreign Assistance Act of 1964; (Section 301(d)(2) of Public Law 89-171 (September 6, 1965) 79 Stat. 659 (1965)). The above are printed in the appendix to the Petition for Certiorari, with the exception of Section 301(d)(2)

of Public Law 89-171, 79 Stat. 659 (1965) and section 4 of the Clayton Act, which are printed in the appendix hereto. Also involved, and printed in the appendix hereto, are Rules 15(a); 19(a),(b); 59(e) and 60 (b) of the Federal Rules of Civil Procedure.

STATEMENT

The Petitioners (hereinafter referred to collectively as "Occidental") filed an action under the Sherman Act against the Respondents and others (hereinafter referred to collectively as "Buttes") seeking treble damages for claimed injury to business or property, and seeking injunctive relief. The complaint also named as defendants Clayco Petroleum Corporation and its president. The Clayco parties were dismissed on grounds of defective service, and lack of personal jurisdiction and venue. No appeal was taken from their dismissal.

Buttes and Occidental are American oil companies with subsidiaries operating in the Arabian Gulf. Occidental had reported gross revenues of over $2 billion, or about 275 times the $7.5 million gross revenues of Buttes, and Occidental had net income of about $175 million, or 134 times Buttes' net income of $1.3 million. [R. 83] *

The complaint, [R.1-22], alleged that Buttes engaged in a plan to control and eliminate competition by "preventing plaintiffs from acquiring and exploiting rights to petroleum reserves in the offshore area of the Trucial States." [Complaint, ¶ 21, R.8]

---

* Reference to pages in the Clerk's Record in the District Court are preceded by "R.", except for pages of the Transcript of Oral Argument which are preceded by "R.Tr."

In November, 1969, Occidental entered into a concession agreement with the Trucial State of Umm Al Qaywayn by which Occidental was granted a right to exploit resources which might be discovered in lands under the Arabian Gulf adjacent to the coast of Umm Al Qaywayn, including the lands claimed by Umm Al Qaywayn as within its continental shelf. The concession area included submerged lands extending to within three miles of the coastline of the island of Abu Musa, which lies about 38 miles off the coast of Umm Al Qaywayn and Sharjah, which at all times mentioned in the Complaint, was a Trucial State adjacent to Umm Al Qaywayn.

In December, 1969, Buttes entered into a concession agreement with Sharjah by which Buttes obtained rights to explore for and exploit oil resources of the submerged lands of Sharjah. The island of Abu Musa is claimed by Sharjah, and is not claimed by Umm Al Qaywayn. In addition, Iran claims ownership of the island of Abu Musa and a twelve mile territorial sea belt surrounding it, the same limit asserted by her generally over her marginal seas. Under principles of international law, Sharjah claims a territorial sea of twelve miles from all its coastlines, including the coastline of Abu Musa. Sharjah's claim to this area is also based upon the doctrine of the continental shelf. *See,* Convention on the Continental Shelf, Art. I, II (Law of the Sea Convention No. IV, Ch. 2, 209-276 (1962).

In the course of its seismic explorations, Occidental discovered an area about nine miles from the coastline of Abu Musa which showed structures of the kind favorable to the existence of oil.

Thus an area thought to have promising potential for oil development lies within the claimed continental shelf

boundary of Umm Al Qaywayn, and the claimed territorial sea and continental shelf boundaries of Sharjah.

The complaint alleged that Occidental was denied opportunity to exploit the promising area, and that the denial resulted from Sherman Act violations by Buttes. The allegations made by Occidental to support it may be summarized as follows:

A. The complaint alleged that Buttes induced the Ruler of Sharjah to issue decrees setting forth Sharjah's claim to a twelve-mile territorial sea surrounding Abu Musa, and that the Ruler of Sharjah backdated one of these decrees. [R. 9]

B. The complaint alleged that the decrees constituted an attempt to appropriate Occidental's concession in violation of international law. [R. 9-11] However, there is no allegation of a confiscation by Great Britain, or by Iran, or by Umm Al Qaywayn, or by Sharjah, and there is no allegation that any of the acts of the states of Great Britain, Iran or Umm Al Qaywayn, violated international law.

C. The complaint alleged that the Ruler of Sharjah acted for personal gain and benefit, and was a co-conspirator of Buttes [R. 9, 236-37], and also claimed that Buttes arranged to have its attorney appointed as Legal Advisor to Ruler of Sharjah for the purpose of obtaining the decrees mentioned above. [R. 10]

D. The complaint alleged that in May, 1970 Buttes induced the National Iranian Oil Company to announce a claim to Abu Musa on behalf of Iran, by issuance of a letter to that effect. [R. 222-23].

The complaint did not allege that this was a confiscation, or that it violated international law.

E. The complaint alleged that Buttes had "induced and procured personnel of the British Foreign Office to request [of Occidental] that they not commence drilling operations". [R. 12]

F. The complaint alleged that Occidental's opportunity to exploit the disputed area was frustrated when, in June, 1970, a vessel of the British Royal Navy "menaced and threatened" Occidental's drilling equipment as it stood ready to commence drilling operations. The complaint further alleged that the home of the Ruler of Umm Qaywayn was "buzzed by airplanes of the British Royal Air Force and surrounded by British soldiers;" and that the Ruler of Umm Al Qaywayn directed Occidental not to drill. It further alleged that Occidental was "forced to abandon indefinitely their plans to commence drilling operations." [R. 12-13] The complaint did not allege that this application of force by the British government was induced or procured by Buttes.

The District Court dismissed the complaint on the ground that it would have required inquiry into the validity of acts of foreign states—an inquiry American Courts may not make because of the acts of state doctrine.

On appeal by Occidental, Buttes urged that correctness of the dismissal on act of state grounds, as well as upon four other grounds which were rejected by the District Court.

The Court of Appeals, by per curiam opinion, affirmed the dismissal for the reasons stated in the Dis-

trict Court opinion, deciding that it need not consider whether the dismissal would have been appropriate for any of the other reasons urged. In the opinion of Buttes, each of the other grounds would independently justify dismissal of the action. Briefly stated, they include the following:

(1) An essential element of a Sherman Act private action is injury to business or property resulting from the alleged violation, and Occidental could not show such causal connection without having the District Court determine the location of the disputed boundary between Sharjah and Umm Al Qaywayn—a determination which is beyond the competence of American courts.

(2) Even if the District Court had jurisdiction to adjudicate boundary disputes between foreign sovereigns, in such a determination, the sovereigns involved would be indispensable parties, and they are absent from the pending suit.

The District Court held that Occidental's claim did not invoke the Hickenlooper Amendment to the Foreign Assistance Act. The court held that an allegation of "attempted confiscation" does meet the requirements of the Hickenlooper Amendment that to avoid application of the act of state doctrine a claim must be based upon a "confiscation or other taking". The District Court also held that the Hickenlooper Amendment was not invoked by Occidental as to acts of Great Britain, Iran, or Umm Al Qaywayn, because there was no claim that any act of any of these sovereigns was a confiscation or was in violation of international law.

ARGUMENT

I. THE CASE DOES NOT RAISE THE QUESTION SOUGHT TO BE PRESENTED

The petitioners state the question presented as follows:

> Whether the act of state doctrine bars an antitrust action by an American company against other American companies and their officers, all private American citizens, for a conspiracy, formed and furthered in the United States, to preclude competition in foreign and interstate commerce on the United States merely because conduct in furtherance of the conspiracy induced acts by foreign governmental officials which violated international law.

The Respondents respectfully submit that this question is not before the Court.

1. The District Court Did Not Dismiss "Merely Because Conduct in Furtherance of the Conspiracy Induced Acts by Foreign Governmental Officials Which Violated International Law."

The District Court dismissal was based on a conclusion that in a private action under the antitrust laws, a causal connection between alleged violation and alleged harm is an essential element of the claim, and that where it appears from the face of the complaint that a causal connection cannot be substantiated except by determination of the reasons for the acts of foreign governments, no claim is stated. The District Court found that the complaint, taken as true, would require an impermissible inquiry into the reasons for acts of foreign governments. That decision left unaffected the doctrine of *United States* v. *Sisal Sales Corp.*, 274 U.S. 268 (1927) and *Continental Ore Co.* v. *Union Carbide and Carbon Corp.*, 370 U.S. 690 (1962), that trade-restraining conduct of private parties is not immunized

by the fact that they utilized, for private ends, advantages conferred by foreign government.

Moreover, irrespective of resolution of the act of state issue Occidental did not allege that Buttes induced, procured or caused the British Government to exercise military force against Occidental and Umm Al Qaywayn, and Occidental did not allege any reason except such show of force as the alleged cause preventing Occidental from drilling. Thus, Occidental failed to plead a claim against Buttes, and that flaw independently supports the District Court's dismissal, rendering it unnecessary to decide the question set forth in the petition for certiorari.

2. The Application of the Act of State Doctrine to Sovereign Acts of Great Britain, Iran and Umm Al Qaywayn Independently Supports Dismissal.

The allegation of "attempted confiscation" was directed only at acts of Sharjah, and not at acts of Great Britain, Iran or Umm Al Qaywayn, notwithstanding that an adjudication of the acts of these three other states, as the District Court found, "would form an integral part of plaintiffs' case." [R. 395; 331 F.Supp. at 112]

Thus whether the acts of Sharjah were or were not sovereign acts is irrelevant, because the resolution of that question would leave unaffected the decision that the complaint did not invoke the Hickenlooper Amendment as to the acts of the other three sovereigns.

3. The Application of the Hickenlooper Amendment to Acts of Sharjah Is Not Presented.

The District Court held that an alleged "attempted confiscation" by Sharjah was insufficient to invoke the Hickenlooper Amendment, which is restricted to "con-

fiscations or other takings" in violation of international law.

Occidental, in apparent recognition that its complaint did not invoke the Hickenlooper Amendment, suggests that the complaint should have been read "as alleging that all purported governmental acts culminated in a violation of international law." (Petition, at 16) The petition also asserts that "If, for pleading purposes, the Hickenlooper Amendment requires the allegation of a completed confiscation, Occidental should have been given leave to allege so by amendment." (p. 16)

Thus, the petition would have this Court refashion Occidental's complaint at this late stage, either by reading into it essential allegations clearly not within it, or by ordering the District Court to grant leave to amend. Neither course is warranted.

The complaint has already been reviewed by the District Court and the Court of Appeals, and the interpretation suggested in the petition is not a fair inference from what was actually pleaded. Occidental pleaded, at separate places in the complaint, that Sharjah's conduct was an "attempted confiscation" [Complaint, ¶ 22(d); R. 9-10], and that Sharjah "attempted to appropriate" Occidental's concession. [Complaint ¶ 22 (g); R. 11] In addition, Occidental stated in its complaint; and in its brief in the District Court, that the alleged acts of Sharjah were ineffective in influencing the British Foreign Office, and that, notwithstanding the alleged acts of Sharjah, the British Foreign Office informed Occidental it could proceed to drill. [Complaint, ¶ 22(h); R. 12; R. 221-222] Thus the suggestion that, somehow, Occidental had pleaded a confiscation by Sharjah is contradicted by what it actually did plead.

Moreover, Occidental did not move in the District Court to amend after the District Court's Opinion and Order was issued, as it could have moved under Rules 15(a), 59(e) and 60(b) of the Federal Rules of Civil Procedure. *See,* 3 Moore, Federal Practice, ¶¶ 15.07 [2], 15.10 (2d ed. 1970).

II. THE DECISIONS OF THE COURTS BELOW ON THE GROUNDS OF ACT OF STATE ARE CORRECT.

The decision of the District Court, affirmed per curiam by the Court of Appeals, correctly follows the language and prior judicial interpretations of the antitrust laws, as well as the amendments to the Foreign Assistance Act Amendments, and the prior judicial applications of the act of state doctrine.

1. The Acts of Foreign States Were Necessarily Called into Question by Occidental's Complaint

Occidental's complaint claimed injury to its business or property as a result of its having been prevented from exploiting the subsea resources hoped to be found in an area of the Arabian Gulf nine miles from the coastline of the island of Abu Musa.

According to the complaint, actions of the British and Umm Al Qaywayn governments deterred Occidental from drilling. Umm Al Qaywayn allegedly acted because it was threatened by British Armed force. The complaint does not allege why Great Britain so acted.

If Great Britain's conduct were caused by factors entirely separate from, and unrelated to attempted persuasion by Buttes, no one would suggest that Buttes should bear legal liability for such governmental conduct. Thus, critical to Occidental's claim would be a determination that the acts of Great Britain described in the complaint were caused by Buttes.

To reach such a conclusion the District Court would have had to sit in judgment on what factors influenced British foreign policy to apply military force in a politically complex and sensitive area of the world. It would have had to ascertain whether British policy was influenced at all, or to what degree, by the entreaties of a small American oil company, as opposed to whatever other considerations the British Government was weighing.

Similarly, the District Court would have had to determine what considerations influenced the Ruler of Umm Al Qaywayn to order Occidental not to drill; what considerations influenced Iran to claim Abu Musa, and what considerations influenced the Ruler of Sharjah to issue decrees and to enter into a concession agreement.

For a private plaintiff to be entitled to antitrust relief, he must allege not only that an antitrust violation has been committed and that he was injured. Also, he must allege that the "injury to his business or property" was caused by the antitrust violation. (15 U.S.C. § 15) The allegation of a causal link between the alleged violation and the damage to business or property is essential. *Flinkote Co.* v. *Lysfiord,* 246 F.2d 368, 392 (9th Cir.), *cert. denied,* 355 U.S. 835 (1957); *Glenn Coal Co.* v. *Dickinson Fuel Co.,* 72 F.2d 885, 887 (4th Cir. 1934). *See, also, Story Parchment Co.* v. *Paterson Parchment Co.,* 287 U.S. 555 (1931); *Hawaii* v. *Standard Oil Co.,* 405 U.S. 251 (1972).

Thus any antitrust claim accruing to Occidental would have necessarily turned on the results of a judicial inquiry into the reasons for the acts of foreign sovereigns.

2. The Act of State Doctrine Precludes Inquiry into the Acts of Foreign States

In *First National City Bank* v. *Banco Nacional de Cuba,* 406 U.S. 759, 762-63 (1972) and in *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398, 416 (1964), this Court referred to the "classic American statement" of the act of state doctrine found in *Underhill* v. *Hernandez,* 168 U.S. 250 (1887) where Chief Justice Fuller said for a unanimous Court (168 U.S. at 252):

> Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.

In *Sabbatino,* this Court also said, 376 U.S. at 416-17:

> None of this Court's subsequent cases in which the act of state doctrine was directly or peripherally involved manifest any retreat from Underhill. See American Banana Co. v United Fruit Co., 213 US 347, 53 L ed 826, 29 S Ct 511; Oetjen v Central Leather Co., 246 US 297, 62 L ed 726, 38 S Ct 309; Ricaud v American *Metal Co., 246 US 304, 62 L ed 733, 38 S Ct 312; Shapleigh v Mier, 299 US 468, 81 L ed 355, 57 S Ct 261, 113 ALR 253; United States v Belmont, 301 US 324, 81 L ed 1134, 57 S Ct 758; United States v Pink, 315 US 203, 86 L ed 796, 62 S Ct 552. On the contrary in two of these cases, Oetjen and Ricaud, the doctrine as announced in Underhill was reaffirmed in unequivocal terms.

The Court, 376 U.S. at 418, quoted the statement of the act of state rule in *Ricaud* v. *American Metal Co.*, 246 U.S. 304-309 (1968), as follows:

> It requires only that, when it is made to appear that the foreign government has acted in a given way on the subject-matter of the litigation, the details of such action or the merit of the result cannot be questioned but must be accepted by our courts as a rule for their decision.

The citation in *Sabbatino* of *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 347 (1909), is particularly pertinent because petitioners have attempted to distinguish *American Banana* by quoting from that part of the opinion dealing with the extent of extraterritorial reach of the Sherman Act; not that part dealing with act of state. Whether or not this Court has, as petitioner asserts, "rejected" *American Banana's* "restrictive view of the Sherman Act's territorial reach" (Petition, p. 9) is irrelevant, because the extraterritorial reach of the Sherman Act is not here at issue. *American Banana's* ruling on the act of state doctrine has not been rejected. Indeed, it was reaffirmed in *Ricaud*, 246 U.S. at 309; *Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 303 (1918) and *Sabbatino*, 376 U.S. at 398, 416-17. *See, also, United Mine Workers* v. *Pennington*, 381 U.S. 657, 671 (1965).

There is also no substance to Occidental's argument that *United States* v. *Sisal Sales Corp.*, 274 U.S. 268 (1927) and *Continental Ore Co.* v. *Union Carbide & Carbon Corp.*, 370 U.S. 690 (1962) have undercut the act of state doctrine as described in *American Banana*.

In *United States* v. *Sisal Sales Corp.*, 274 U.S. 268 (1927), a *world monopoly* on sisal was achieved by a series of private actions in the United States and Mexi-

co, some of which were aided by discriminatory Mexican legislation. This Court held that the course of conduct involved was illegal, carefully distinguishing it from *American Banana*, 274 U.S. at 276:

> The United States complain of a violation of their laws within their own territory by parties subject to their jurisdiction, not merely of something done by another government at the instigation of private parties. True, the conspirators were aided by discriminating legislation, but by their own deliberate acts, here and elsewhere, they brought about forbidden results within the United States. They are within the jurisdiction of our courts and may be punished for offenses against our laws.

Similarly, *Continental Ore* did not turn on an act of state issue. The defendants were accused of joint efforts to monopolize the vanadium market in the United States. ElectroMet of Canada, a subsidiary of one of the alleged conspirators, had been appointed by the Canadian Government as its exclusive vanadium purchasing agent during World War II. The plaintiff alleged that ElectroMet used its "discretionary powers" as purchasing agent in furtherance of a conspiracy to destroy plaintiff's business, by refusing to purchase from plaintiff.

This Court, in holding that the use of their discretionary authority did not shield the defendants' private conduct from the antitrust laws, made it abundantly clear that the plaintiff's cause of action did not require inquiry into the validity of acts of the Canadian Government (370 U.S. at 706): "In the present case petitioners do not question the validity of any action taken by the Canadian Government or by its Metals Controller."

Thus neither *Sisal* nor *Continental Ore* undercut the holding of *American Banana* that American courts will not inquire into the validity of the acts of a foreign state. That conclusion is also manifested in *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965) where the Court held that antitrust damages could not be recovered for injury suffered as a result of the acts of government. Among the cases cited for that conclusion was *American Banana,* 381 U.S. at 671.

There is, therefore, no basis for the argument that the act of state doctrine has been cast aside in antitrust cases. In such cases, as in others, American courts will not entertain actions the outcome of which would require determination of the reasons for, or the validity of, decisions taken by foreign sovereigns.

3. The Alleged Acts of Great Britain, Iran, Umm Al Qaywayn and Sharjah Are Sovereign Acts as to Which the Act of State Doctrine Applies

Petitioners do not dispute that the acts of Great Britain were sovereign acts. There is therefore no question but that the act of state doctrine precludes inquiry into the acts of Great Britain. This alone supports the judgment below.

With respect to Iran, the petition states (p. 66) that "the complaint alleged only a private commercial communication by an Iranian oil company, at Buttes' and Clayco's urging, that Iran claimed Abu Musa." The Petition fails to apprise this Court that during argument in the District Court, Occidental conceded that the National Iranian Oil Company expressed the claim of Iran to Abu Musa *on behalf of the Government of Iran.* [R.Tr. pp. 56-57.] For example, the District Court asked Occidental's counsel:

> "What is the basis of Iran's claim—that they just own the island?"

To which Occidental's counsel replied:

> They now claim they own the island, instead of the Shiek of Sharjah, and therefore they can go twelve miles instead of three miles.
>
> It has always been three miles, but this is a claim now for the first time not by these small shieks, *but by a government through the National Iranian Oil Company.* [R.Tr. 57, emphasis added]

This was only one of three separate acknowledgments by counsel for Occidental that the claim was on behalf of the Government of Iran. The District Court concluded that Occidental had conceded that the claim was made on behalf of Iran. [R. 409, 331 F.Supp. at 110 n.30]

Since Occidental's case would require inquiry into the reasons for, and validity of sovereign acts of Iran, the dismissal on act of state grounds was correct.

The District Court was also correct in holding that the complaint would require an impermissible inquiry into the acts of Sharjah or of Umm Al Qaywayn, also sovereign states. Sharjah and Umm Al Qaywayn, were, at all times mentioned in the complaint, Trucial States. The Trucial States have been recognized as sovereign by Great Britain, and accorded sovereignty in British courts. *Antoun* v. *Harrison & Sons, Ltd.,* The Times Law Report 15 (Vacation Ct. Queen's Bench Div. September 23, 1965). See, also, Al-Baharna, The Legal Status of the Arabian Gulf States, 147-48 (1968)

The act of state doctrine has been held applicable to Wuerttemberg, a constituent state of West Germany. *Carl Zeiss Stitfung* v. *VEB Carl Zeiss, Jena,* 293 F.Supp. 892 (S.D.N.Y. 1968), *aff'd,* 433 F.2d 686 (2d Cir. 1970).

Occidental's argument, invoking *Jimenez* v. *Aristeguieta*, 311 F.2d 547 (5th Cir. 1962), that the act of state doctrine does not apply because the Ruler of Sharjah allegedly was motivated by "his own personal gain and benefit", (Petition, p. 20) is wrong. The District Court concluded that the complaint "clearly indicates that the Ruler of Sharjah acted at all times in his official capacity and on behalf of his state." [R. 397; 331 F.Supp. at 113] The acts complained of in *Jimenez* were not acts of a sovereign, but were a man's crimes against the law of his own country.

Occidental is also wrong in asserting that the Trucial States are denied the benefit of the act of state doctrine because Great Britain exercised supervision over their foreign affairs. The Trucial States are recognized as sovereigns in British courts. *Antoun* v. *Harrison & Sons, Ltd.*, The Times Law Report 15 (Vacation Ct. Queen's Bench Div. September 23, 1965). Their relations with Great Britain are by treaty, itself an expression of their sovereignty. Moreover, the vesting by one government of authority in another government to conduct its foreign relations does not defeat a claim of sovereignty. *Sullivan* v. *State of Sao Paulo*, 36 F.Supp. 503 (E.D.N.Y.), *aff'd*, 122 F.2d 355, 359 (2d Cir. 1941).

Thus, even if the complaint turned solely on acts of Sharjah and Umm Al Qaywayn—which it did not—the District Court was correct in holding that the act of state doctrine precluded inquiry into the acts of Sharjah and Umm Al Qaywayn alleged in the complaint.

4. The Hickenlooper Amendment Does Not Permit Inquiry into the Acts of States Called into Question by the Complaint in this Case

The Hickenlooper Amendment to the Foreign Assistance Act of 1964 (sometimes called the "Sabbatino" amendment), 22 U.S.C. § 2370(e)(2), is a careful Congressional declaration of a limited exception to the act of state doctrine. The amendment reads as follows:

> Notwithstanding any other provision of law, no court in the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law in a case in which a claim of title or other right to property is asserted by any party including a foreign state (or a party claiming through such state) based upon (or traced through) a confiscation or other taking after January 1, 1959, by an act of that state in violation of the principles of international law, including the principles of compensation and the other standards set out in this subsection: *Provided,* That this subparagraph shall not be applicable (1) in any case in which an act of a foreign state is not contrary to international law or with respect to a claim of title or other right to property acquired pursuant to an irrevocable letter of credit of not more than 180 days duration issued in good faith prior to the time of confiscation or other taking, or (2) in any case with respect to which the President determines that application of the act of state doctrine is required in that particular case by the foreign policy interests of the United States and a suggestion to this effect is filed on his behalf in that case with the court.

That amendment was designed to overturn in part *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398 (1964), which held that the courts of the United States

would not make inquiry into the validity under Cuban law of acts of expropriation by the Castro government.

The District Court correctly decided that the Hickenlooper Amendment did not apply to this case.

A. The Complaint Is Not Based Upon a Confiscation or Other Taking.

The first predicate for operation of the Hickenlooper Amendment is a claim of confiscation or other taking of property. The complaint in this case made no claim of confiscation or other taking by Great Britain, Iran, Umm Al Qaywayn or Sharjah. For that reason alone, the Hickenlooper Amendment was properly held not to apply to the complaint.

With respect to Sharjah, the complaint asserted only that the acts of Sharjah constituted "in effect an attempted confiscation, without compensation, of plaintiffs' vested property rights in the oil and gas to which they were entitled . . .". [Complaint ¶ 22(d), R. 9-10] The District Court held that this allegation did not allege a confiscation or taking as required by the Hickenlooper Amendment.

In an effort to avoid this deficiency in its pleading, Occidental made a mistake respecting the legislative history of the Hickenlooper Amendment, by citing as evidence of Congressional intent, the wrong Congressional committee report. Occidental cites a Senate Committee Report on the original Hickenlooper proposal which was discarded by the Congress in favor of a precisely limited exception to the act of state doctrine. Thus, Occidental (Petition, p. 11) quotes from Senate Report No. 1188, 88th Cong., 2d Sess. (1964) in an attempt to create an impression that the Hickenlooper Amendment was intended to work a wholesale reversal of the act of state doctrine, as applied in *Sabbatino,* by

establishing a presumption that an adjudication on the merits would not embarrass the Executive in the conduct of foreign policy. This report, Senate Report No. 1188, was directed to the original language of the Hickenlooper proposal, as it was adopted in the Senate Committee and as it was approved in the Senate, as an amendment to a House bill, (H. R. 11380, 88th Cong., 2d Sess. 1964). In the subsequent Committee on Conference of the two houses the Hickenlooper proposal was rewritten to change entirely its original concept, and to create a limited exception to the act of state doctrine, applying solely to cases where a claim of title or other rights is asserted, based upon a confiscation or other taking by a foreign government in violation of international law. The "reversal of presumption" contemplated in the original Hickenlooper proposal was abandoned. The Conference Committee language was substituted for the language in the original Senate bill, and was enacted into law. H.R. Rep. No. 1925, Conference Report to accompany H.R. 11380, The Foreign Assistance Act of 1964, 88th Cong., 2d Sess., 3-4, 16 (1964).

In *French* v. *Banco Nacional de Cuba,* 23 N.Y.2d 46, 60, 295 N.Y.S.2d 433, 447 (1967) the court emphasized the carefully limited scope of the 1964 amendment:

> Further proof of the limited scope intended for the exemption from the act of state doctrine is found in the *Senate's refusal to enact Senator Hickenlooper's original, broadly worded, draft of the amendment which would have made the act of state doctrine inapplicable to* any *case 'in which an act of a foreign state occurring after January 1, 1959 is alleged to be contrary to international law.' The statute, as actually adopted in 1964, contained the far more restrictive wording which we have already discussed.* [23 N.Y.2d at 60-6, 295 N.Y.S.2d at 447. Emphasis added]

The court also stated (23 N.Y.2d at 60, 295 N.Y.S.2d at 447):

> The words 'confiscation' and 'taking,' the debates and committee hearings established, were used synonymously with 'expropriation' and 'nationalization.' (See, e.g., Hearings Before Senate Committee on Foreign Relations on S. Bill 2659, 2660, 2662, 88th Cong., 2d Sess. [1964], p. 619; S. Rep. No. 1188, Pt. I, 88th Cong., 2d Sess. [1964], p. 24; 110 Cong. Rec. 19548, 19557-19559, 23680, 24076-24077.)

Senate Report No. 1188, cited by Occidental, therefore offers no aid in interpreting the language of the Hickenlooper Amendment as finally enacted.

It should also be noted that the assertion of a subsea boundary claim cannot be considered a taking or confiscation. Umm Al Qaywayn and Sharjah each claim title to the area which is in dispute. They are simply involved in a controversy over boundary.

Occidental cites no cases suggesting that a state takes or confiscates property by publishing declarations as to where it asserts its boundaries are located. Common sense dictates that such declarations should not be considered takings or confiscations. The assertion of claims is the proper way to make differences known, so that they may be resolved by diplomacy, treaty, arbitration, or World Court adjudication. *See, e.g.,* the resolution of claims to certain portions of the North Sea continental shelf, *Germany-Denmark-Netherlands North Sea Continental Shelf Cases* [1969] I.C.J. 3; and the resolution of Norway's claim of the right to use straight baselines for measuring the breadth of its territorial sea, *United Kingdom-Norway Fisheries Case,* [1951] I.C.J. 116.

It is apparent, therefore, that the complaint made no claim of confiscation or taking, and the Hickenlooper Amendment is not applicable to this case.

In an effort to overcome this flaw, the petition asserts that the complaint should have been read as alleging that "all the purported governmental acts culminated in a violation of international law," and that the ultimate effect of the ousting of Occidental from its concession was an "internationally unlawful confiscation without compensation." (Petition, 16) Occidental asserts that it should have been granted leave to so allege.

This defect cannot be so easily cured. Occidental made explicit in its complaint, and in its brief in the District Court, that the alleged acts of Sharjah were ineffective in influencing the British Foreign Office, and that in the face of such alleged acts of Sharjah, the British Foreign Office informed Occidental it could proceed to drill [R. 12, 221-222.] The suggestion that Occidental claimed Sharjah's acts constituted a confiscation is not only a belated afterthought, but is squarely inconsistent with Occidental's pleading and argument presented below.

In short, Occidental asserted no claim based on a taking or confiscation which would call into operation the Hickenlooper Amendment's exception to the act of state doctrine.

B. The Complaint Is Not Based Upon a Confiscation or Other Taking in Violation of International Law.

A second predicate of the Hickenlooper Amendment is that the alleged taking or confiscation be an act of state "in violation of the principles of international law. . . ."

While the complaint made a conclusory assertion that Sharjah violated international law, the allegedly unlawful acts do not constitute even a colorable allegation of violation of international law. The petition suggests no case holding that it is a violation of international law for a nation to announce a boundary claim; to enter into a concession agreement; to appoint a legal advisor; or to urge the merits of its claim on other nations.

With respect to the acts of Great Britain, Iran and Umm Al Qaywayn, no claim is made that any of their acts violated international law. Thus the second predicate of the Hickenlooper Amendment is not met as to any of these three states, and the act of state doctrine precludes inquiry into the validity and effect of their acts. *F. Palicio y Compania, S.A.* v. *Brush,* 256 F.Supp. 481, 487 (S.D.N.Y. 1966); *Present* v. *U.S. Life Insurance Co.,* 96 N.J. Super 285, 232 A.2d 863, 872 (1967), *aff'd per curiam,* 51 N.J. 407, 241 A.2d 237 (1968). Since the complaint herein is not based on confiscation or taking in violation of international law, the Hickenlooper Amendment does not apply.

C. The Hickenlooper Amendment Does Not Apply to the Alleged Confiscation or Taking of Contract Rights.

The complaint is based on an alleged interference with contractual rights rather than on a taking of property. Occidental's complaint, Paragraph 12 [R. 4], described the concession as an "agreement wherein and whereby, for good and valuable consideration, Umm Al Qaywayn granted Occidental . . . the exclusive right . . . to explore, search, drill for, produce, extract and sell as its own, oil and gas from the seabed and subsoil underlying the territorial and offshore waters of Umm Al Qaywayn. . . ."

The Hickenlooper Amendment is not applicable to contract claims, but only to claims to property. By Section 301(d)(2) of Public Law 89-171 (September 6, 1965) Congress revised the 1964 Hickenlooper Amendment by inserting the words "to property" in two sections, in order to clarify the word "right" as used in the 1964 Hickenlooper Amendment. 79 Stat. 659 (1965). Thus, the statute was changed to require "a claim of title or other right *to property.*" (Emphasis added.) This was intended to make explicit the fact that all contract claims were excluded from the operation of the Hickenlooper Amendment.

With respect to the 1965 modification, *French* v. *Banco Nacional de Cuba,* 23 N.Y.2d 46, 61-62, 295 N.Y.S.2d 433 (1968) stated:

> . . . Congress decided to eliminate *all* contract claims from the statute rather than attempt the more subtle task of distinguishing between contract cases in which the act of state defense might be asserted and those in which it might not. Judge Keating may disapprove of Congress' choice of a method for accomplishing its purpose, but that choice—by the plain evidence of the 1965 amendment and of the accompanying Senate Report—is the one that was made, and it is binding upon us.

The *French* case therefore squarely sets forth that the Hickenlooper Amendment is not a judicial warrant to inquire into alleged confiscations of contractual rights by acts of states.

D. There is No Res Before the United States Courts Over Which Jurisdiction Can Be Exercised

The subject matter of the alleged "attempted confiscation"—oil resources thought to exist in the disputed area in the Arabian Gulf—is not within the

jurisdiction or control of the courts of the United States. The legislative history of the Hickenlooper Amendment discloses that it applies only to confiscated property before a United States court. Senator Hickenlooper stated, 110 Cong. Rec. 19557 (1964):

> The amendment is designed to discourage uncompensated appropriation of foreign investment by preserving the right of the original owners to attack any taking in violation of international law *if the property involved comes before a U.S. court.* (Emphasis added.)

In explaining the amendment to the House of Representatives upon its consideration of the Conference Report, Congressman Adair stated:

> It insures that however the case may arise or the act of state doctrine be invoked, a party who had suffered an expropriation in violation [of the principles of international law] *may bring suit to assert his claim to the expropriated property if there is an attempt to market it in the United States* or can resist a suit by the expropriating government to seize the property. (110 Cong. Rec. 23680 (1964)) (Emphasis added.)

Thus, the intent of Congress was that the confiscated *res* must come before the United States court before the Hickenlooper Amendment would apply.

III. THE DECISION BELOW IS INDEPENDENTLY SUPPORTED ON OTHER GROUNDS REJECTED BY THE DISTRICT COURT AND NOT REACHED BY THE COURT OF APPEALS.

1. The Complaint Was Correctly Dismissed Because the Lack of Jurisdiction to Fix the Boundaries of Foreign Nations Precludes Proof of Injury Cognizable under the Antitrust Laws.

The courts of the United States lack jurisdiction to adjudicate boundary disputes between nations. In *De La Croix* v. *Chamberlain,* 25 U.S. (12 Wheat.) 599, 600 (1827), the Court stated:

> A question of disputed boundary between two sovereign independent nations, is, indeed, much more properly a subject for diplomatic discussion, and of treaty, than of judicial investigation.

To the same effect are *Foster* v. *Neilson,* 27 U.S. (2 Pet.) 253, 304 (1829); *Garcia* v. *Lee,* 37 U.S. (12 Pet.) 511, 516-17 (1838); *Williams* v. *Suffolk Ins. Co.,* 38 U.S. (13 Pet.) 415 (1839).

The District Court correctly decided that it lacked jurisdiction to fix the boundary between the states of Sharjah and Umm Al Qaywayn. [R. 383, 331 F.Supp. at 103]

Notwithstanding that ruling, the District Court held that the resolution of the antitrust complaint before it did not require an explicit or implicit adjudication of the boundary dispute. The District Court characterized Occidental's theory as that of a conspiracy under the antitrust laws in the "clouding of the boundary question." [R. 383, 331 F.Supp. at 104] The District Court erred in assuming that the boundary dispute would not, of itself, prevent an adjudication of the antitrust question.

For a private plaintiff to be entitled to antitrust relief, he must allege that he has been caused injury to his business or property by an antitrust violation. See cases cited *supra,* at 12.

Occidental claimed injury to its business and property in that it was denied the potential oil resources in a concession area granted to it by Umm Al Qaywayn, which is claimed by Sharjah and by Iran.

If the disputed area is not within Umm Al Qaywayn's boundaries, Occidental will have been deprived of none of the oil resources in that area because it will have been entitled to none. As an indispensable element of its case, therefore, Occidental would have to prove that it had a right to the oil resources in the disputed area. Occidental cannot make that proof without establishing that the disputed area is within the boundaries of Umm Al Qaywayn. But Occidental cannot offer evidence on that question simply because the District Court cannot decide where the boundaries of Umm Al Qaywayn are.

It is apparent that Occidental can state no claim for injury upon which it can recover, because its injury, if any, is legally incapable of ascertainment. *See, Keogh* v. *Chicago & N.W. Ry.,* 260 U.S. 156 (1922); *Okefenokee Rural Elec. Membership Corp.* v. *Florida P. & L. Co.,* 214 F.2d 413 (5th Cir. 1954); cited approvingly in *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965).

In conclusion, Occidental's antitrust claim requires a showing of its entitlement to occupancy and use of the disputed area. That showing cannot be made because the court cannot adjudicate the location of the disputed boundary. Occidental's complaint therefore was correctly dismissed.

2. The Complaint Was Correctly Dismissed Because of the Absence of Sharjah, Umm Al Qaywayn and Iran Which Are Indispensable Parties.

Rule 19 of the Federal Rules of Civil Procedure sets forth criteria for determining when, in the absence of a party (Fed. R. Civ. P. 19(a)) "in equity and good conscience the action should proceed among the parties before it. . . ." (Fed. R. Civ. P. 19(b)). The criteria are based upon the principle of *Shields* v. *Barrow,* 58 U.S. (17 How.) 130 (1855) that "a circuit court can make no decree . . . between the parties before it, which so far involves or depends upon the rights of an absent person" without the joinder of that person.

Sharjah, Umm Al Qaywayn and Iran are indispensable parties because the territorial sovereign rights of one or more of them would be materially prejudiced by outcome of the litigation. This is a case where two concessionaires, *i.e.,* two lessees, are in dispute over the validity of title derived from their respective grantors-lessors. Two of the three principal parties in interest are the grantors—Sharjah and Umm Al Qaywayn—and none is a party to the action.

The applicable rule is stated by Moore as follows:

> Where the result of the suit is dependent upon the validity of the right or title of an absent person, as a suit for an injunction against one who is acting under the charter of another, or a suit between lessees of different persons for the same property . . . the absent party is indispensable.

3A Moore, Federal Practice ¶ 19.12, at 2371 (2d ed. 1970); *McConnell* v. *Dennis,* 153 F. 547, 549 (8th Cir. 1907); *South Penn Oil Co.* v. *Miller,* 175 F. 729, 736-37 (4th Cir. 1909); *Lawrence* v. *Sun Oil Co.,* 166 F.2d 466, 469-70 (5th Cir. 1948).

Since the instant case would require determination of sovereignty interests of Sharjah, Umm Al Qaywayn and Iran, they are indispensable parties, and their absence required dismissal.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

THOMAS H. KUCHEL
Attorney for Respondents

Of Counsel:

WYMAN, BAUTZER, ROTHMAN & KUCHEL
FRANK ROTHMAN
ALLAN B. GOLDMAN
GEORGE MIRON

Dated: September 12, 1972
Washington, D. C.

APPENDIX

PUBLIC LAW 89-171—SEPT. 6, 1965
79 STAT. 659

SEC. 301. Chapter 1 of part III of the Foreign Assistance Act of 1961, as amended, which relates to general provisions, is amended as follows:

* * *

(d) Amend section 620, which relates to prohibitions against furnishing assistance to Cuba and certain other countries, as follows:

* * *

(2) Amend subsection (e)(2), which relates to the act of state doctrine, by inserting after the words "other right" each time they appear the words "to property", and by striking out ", or (3) in any case in which the proceedings are commenced after January 1, 1966".

CLAYTON ACT, Section 4; 15 U.S.C. § 15

That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found, or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Federal Rules of Civil Procedure

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) *Amendments.* A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not

been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) *Persons to be Joined if Feasible.* A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) *Determination by Court Whenever Joinder not Feasible.* If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be

dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

* * *

(e) *Motion to Alter or Amend a Judgment.* A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

RULE 60. RELIEF FROM JUDGMENT OR ORDER

* * *

(b) *Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.* On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year

after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.